

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
-vs-) Case No. 19 CR 567-1, 2, 3
)
ROBERT SYLVESTER KELLY, also)
known as R. KELLY, et al.,) Chicago, Illinois
) March 5, 2020
Defendants.) 10:24 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE HARRY D. LEINENWEBER

APPEARANCES:

For the Plaintiff: UNITED STATES ATTORNEY'S OFFICE
BY: MS. ANGEL KRULL
219 S. Dearborn Street
Chicago, IL 60604

For Defendant Kelly: STEVEN A. GREENBERG, LTD.
BY: MR. STEVEN ALLEN GREENBERG
53 W. Jackson Boulevard
Suite 1260
Chicago, IL 60604

For Defendant
McDavid: LAW OFFICES OF BEAU B. BRINDLEY
BY: MR. BEAU B. BRINDLEY
53 W. Jackson Boulevard
Suite 1410
Chicago, IL 60604

VADIM A. GLOZMAN LTD.
BY: MR. VADIM A. GLOZMAN
53 W. Jackson Boulevard
Suite 1410
Chicago, IL 60604

Court Reporter: KELLY M. FITZGERALD, CSR, RMR, CRR
Official Court Reporter
United States District Court
219 South Dearborn Street, Room 1420
Chicago, Illinois 60604
Telephone: (312) 818-6626
kmftranscripts@gmail.com

1 APPEARANCES: (Continued)

2 For Defendant Brown: FEDERAL DEFENDER PROGRAM
3 BY: MS. MARY HIGGINS JUDGE
4 55 E. Monroe Street
Suite 2800
Chicago, IL 60603

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1 (Proceedings heard in open court:)

2 THE CLERK: 19 CR 567, United States v. Kelly, et al.

3 MS. KRULL: Good morning, Your Honor. Angel Krull on
4 behalf of the United States.

5 MS. JUDGE: Good morning. Mary Judge on behalf of
6 Milton Brown who is present.

7 THE COURT: We're here for, what, the presentation of
8 the superseding indictment?

9 MS. KRULL: Correct. We're here for an arraignment,
10 and there are also some pending motions.

11 THE COURT: All right.
12 You want to introduce yourselves --

13 MR. BRINDLEY: Yes, Your Honor.
14 Beau Brindley and --

15 THE COURT: -- so I know who I'm talking to?

16 MR. BRINDLEY: -- Vadim Glozman on behalf of Derrel
17 McDavid.

18 MS. JUDGE: Mary Judge on behalf of Derrel -- Milton
19 Brown. Sorry.

20 MR. LEONARD: Mike Leonard and Steve Greenberg on
21 behalf of Mr. Kelly, Judge. Good morning.

22 THE COURT: Good morning.

23 A couple of things. What does the superseding
24 indictment do to the trial date?

25 MS. KRULL: Your Honor, we have been in discussions

1 with all parties. It appears that we're in agreement with
2 Mr. Greenberg who would like to continue the trial. It
3 appears, though, that Mr. McDavid has an objection to that.

4 THE COURT: It's my understanding that New York has
5 set the trial date for the summer?

6 MR. GREENBERG: Yes, Your Honor.

7 THE COURT: And that Cook County has set a trial for
8 this fall?

9 MS. KRULL: September.

10 MR. GREENBERG: September, Judge, although in all
11 candor, no one really expects that date to move forward at
12 that time.

13 THE COURT: All right. So we get into the back of
14 the queue then?

15 MS. KRULL: Your Honor, we are looking at a potential
16 trial date in possibly October.

17 THE COURT: Okay. So is it a certain date imminent
18 after the superseding indictment that we vacate the trial
19 date?

20 MS. KRULL: Your Honor, the government has no
21 objection to vacating the trial date.

22 THE COURT: All right. What about the co-defendants
23 who want -- who have filed a motion for speedy trial? Will
24 that require a severance?

25 MS. KRULL: Your Honor, the government objects to a

1 severance. There are two reasons why the government is not
2 objecting to continuing the trial.

3 The first reason is that very recently, the
4 government has executed a search warrant, and as part of that
5 execution, we've recovered over 100 electronic devices, and
6 those devices are things like iPads and cell phones and hard
7 drives. And there's no way that we're going to be able to
8 analyze all of those devices before April 27th. And that
9 would affect all three defendants, if there's additional
10 evidence on those devices, or there could be *Brady* or *Giglio*
11 information on those devices. And we just don't feel
12 comfortable going to trial on April 27th because of that.

13 And the second reason that we are not objecting to a
14 continuance of the trial is that it does appear that in the
15 near future the government does intend to supersede the
16 indictment again to add yet another victim.

17 THE COURT: Let me ask Mr. Greenberg, do you wish to
18 have the trial date vacated?

19 MR. GREENBERG: We do.

20 THE COURT: So that's not over your objection?

21 MR. GREENBERG: No, no. We think it needs to be
22 vacated.

23 THE COURT: All right.

24 The motion for speedy trial is presented by
25 Mr. Brindley.

1 Is that you?

2 MR. BRINDLEY: That's us, Judge, yes.

3 We would like to go to trial as scheduled on April
4 the 27th. The superseding indictment has come out now. We've
5 been waiting for it. I don't think the fact that the
6 government waits until late in the day to do some kind of a
7 search should compel Mr. McDavid to have to wait endlessly for
8 trial. His life is on hold here. I understand there's more
9 serious charges that are being brought potentially against
10 Mr. Kelly, but the reality of the situation and for us is he
11 has a right to a speedy trial. We planned to go to trial on
12 April 27th, and he wants to go to trial on April 27th. And
13 nothing that the superseding indictment I'm looking at adds
14 anything from our perspective to change what we're doing, nor
15 as I talked to government counsel this morning, will another
16 superseding indictment add anything from the perspective of
17 Mr. McDavid.

18 And so regardless of the fact the government has done
19 some late search, I don't think that justifies compelling us
20 to wait months and months and months for Mr. McDavid to have
21 his trial, which we've been preparing and will be prepared on
22 April 27th.

23 THE COURT: Who represents Milton Brown?

24 MS. JUDGE: Mary Judge.

25 THE COURT: What's your view?

1 MS. JUDGE: I am not seeking to sever from Mr. Kelly,
2 and since my client is not custody, we are not opposed to
3 continuing the trial date this one more time.

4 But, you know, for all the same reasons, we're not
5 willing to keep this going because, you know, as they said,
6 they are going to be superseding again. If this is going to
7 be an ongoing issue --

8 THE COURT: Okay. The government would propose an
9 October trial date; is that right?

10 MS. KRULL: Correct.

11 THE COURT: October 5th. There's a holiday in
12 between. It's either called Columbus or Indigenous Person's
13 Day, one of the two. I don't think they've decided yet.

14 MR. LEONARD: Judge, could we start the 12th instead,
15 if that's possible?

16 MS. JUDGE: It would have to be the 13th.

17 THE COURT: Then you have a day off. 12th is the
18 holiday.

19 MR. LEONARD: Yeah, so the 13th?

20 THE COURT: 13th. Wait a minute. No, the 13th is
21 not a holiday. It's the 12th, Columbus Day.

22 Is this the same Perry that was just in here?

23 THE CLERK: Yes, sir.

24 THE COURT: My guess is that would go.

25 All right. The 13th, does that work?

1 MS. KRULL: Yes, Your Honor, works for Mr. Brown.

2 MR. GREENBERG: It works.

3 THE COURT: All right. So I'll exclude time for
4 everybody at this point, except for Mr. McDavid who objects, I
5 assume.

6 MR. BRINDLEY: Yes, Judge. We object.

7 THE COURT: So you want to press ahead with your
8 motion to sever him; is that right?

9 MR. BRINDLEY: Just one second, Judge.

10 (Counsel conferring.)

11 MR. BRINDLEY: We would like to think about that and
12 whether we actually want a severance.

13 THE COURT: All right.

14 MR. BRINDLEY: The date of October 13th, I could do
15 that date, and Mr. Glozman can too. So if we don't end up
16 with a severance, we can.

17 Judge, if we could just have about a week to make a
18 decision?

19 THE COURT: Sure. Just tell the government, you
20 know, whether --

21 MR. BRINDLEY: Yes, Your Honor.

22 THE COURT: If I deny the motion to sever -- you
23 know, I haven't. You presented it -- or you haven't presented
24 it. You've just made a --

25 MR. BRINDLEY: We made a demand. We haven't filed a

1 motion to sever.

2 THE COURT: Made a demand.

3 So let's do it this way. If you want to sever, then
4 file your motion to sever, and we'll consider it.

5 MR. BRINDLEY: Yes, Your Honor. That's what we'll
6 do.

7 THE COURT: So until it's filed, I guess there's
8 nothing for me to do other than we can anticipate that you may
9 be filing one --

10 MR. BRINDLEY: Yes.

11 THE COURT: -- but you may not also.

12 MS. KRULL: So will time be excluded, Your Honor,
13 until they file their motion?

14 THE COURT: Yeah, the time will be excluded -- let's
15 see. I'll exclude time for the purposes of a pretrial motion
16 by Mr. McDavid, and I'll -- is there an objection to excluding
17 time for Mr. Kelly and Mr. Brown?

18 MS. JUDGE: No objection.

19 MR. LEONARD: No objection.

20 THE COURT: The time will be excluded in the interest
21 of justice, continuity of counsel.

22 And I'll exclude time at least for the next -- you
23 say a week. You'll file a motion in a week?

24 MR. BRINDLEY: Yes.

25 THE COURT: All right. I'll exclude time for

1 purposes of that motion. So then if you file a motion to
2 sever and I grant it, then we'll take that from then on;
3 otherwise, I'll exclude time until the trial date.

4 MR. BRINDLEY: Understood, Your Honor.

5 THE COURT: All right. So now we need --

6 MS. KRULL: We need to do an arraignment.

7 THE COURT: -- to arraign Mr. Kelly; is that right?

8 MS. KRULL: Yes, Your Honor.

9 THE COURT: All right.

10 Does the superseding indictment affect Mr. McDavid or
11 Mr. Brown?

12 MS. KRULL: There are the same charges against --

13 THE COURT: Pardon?

14 MS. KRULL: There are the same charges against both
15 of those individuals. We have not changed the charges against
16 them.

17 THE COURT: So they do not need to be arraigned, or
18 do they?

19 MS. KRULL: There are slight language differences in
20 this superseding indictment, so we should.

21 THE COURT: All right. Well, just out of caution
22 then, we will -- all right.

23 So Mr. Kelly, does he wish me to read the indictment?

24 MR. LEONARD: No, Judge. We'll acknowledge receipt,
25 waive formal reading, and enter a plea of not guilty to all

1 counts.

2 THE COURT: All right. Let the record show that
3 Mr. Kelly is in court in person. Through his counsel he
4 acknowledges that he's received a copy of the superseding
5 indictment which I believe has 13 counts. He waives formal
6 reading of the same and enters a plea of not guilty.

7 Mr. McDavid?

8 MR. GLOZMAN: Your Honor, we've also received the
9 charging documents and gone over them with Mr. McDavid. We
10 waive formal reading and enter a plea of not guilty as to each
11 count.

12 THE COURT: All right. So Mr. McDavid acknowledges
13 that he's received a copy of the superseding indictment. He
14 likewise waives formal reading of the same and enters a plea
15 of not guilty.

16 Mr. Brown?

17 MS. JUDGE: Your Honor, Mr. Brown has received the
18 superseding indictment, waives formal reading, and enters a
19 plea of not guilty.

20 THE COURT: All right. Let the record show Mr. Brown
21 is in court. Counsel acknowledges receipt of the superseding
22 indictment, waives formal reading of the same, and enters a
23 plea of not guilty.

24 Now, there's a number of discovery motions. The
25 government responded to them. As I interpret the government's

1 responses to the motions, the government has advised all of
2 the federal officials to preserve their law enforcement notes
3 but does not believe they have the authority to order state
4 law enforcement officials to preserve their notes; is that
5 correct?

6 MS. KRULL: That's correct. The state officials are
7 not part of our prosecution team.

8 THE COURT: But you have advised them to do so, or
9 have you?

10 MS. KRULL: The federal agents we have, correct.

11 THE COURT: How about the state, has anybody asked
12 them to preserve their notes?

13 MS. KRULL: We are not in communication with the
14 Chicago Police Department investigators who are working on
15 that case. They're not part of our prosecution team.

16 THE COURT: All right. My understanding is the
17 balance of the request, the government acknowledges their
18 obligations under *Brady* and *Giglio*, and they will -- the
19 question is when they will produce the information. And also
20 they acknowledge *Jencks* material, as I understand it, and they
21 will produce that voluntarily prior to trial at the same time
22 as the *Brady* material; is that right?

23 MS. KRULL: With respect to *Brady*, we will turn over
24 *Brady* material immediately.

25 THE COURT: Okay.

1 MS. KRULL: With respect to *Giglio* and *Jencks*, we
2 represented we will turn that over one month prior to trial.

3 THE COURT: All right. And the defendants wish to
4 push that forward, I guess forward or backward, whatever it
5 is, so that they have more time; is that right?

6 MR. LEONARD: We would, Judge, particularly in light
7 of the long new date and they're already sitting on this
8 information already. A 60-day date, in our mind, would be
9 appropriate prior to the October trial date. They already
10 possess the information and could produce it.

11 THE COURT: Is there a problem with producing it in
12 60 days?

13 MS. KRULL: Your Honor, we have already produced the
14 vast majority of it. We produced last week approximately more
15 than a thousand pages of a lot of the *Jencks* materials and the
16 *Giglio* materials, and so what's left is the things that we're
17 still developing throughout our investigation.

18 And so we don't believe that there's a need to do
19 that 60 days prior to trial. It's abnormally far in advance
20 of trial.

21 THE COURT: I'll split the difference. 45 days prior
22 to trial.

23 MR. LEONARD: We'll take it.

24 MR. GLOZMAN: Will that be for all defendants,
25 Your Honor?

1 THE COURT: Yes.

2 Now, I think the government has acknowledged
3 everything and they produced everything other than *Jencks* and
4 *Giglio* material. And they will do that -- is there any --

5 MR. LEONARD: There's still a couple of categories,
6 Judge.

7 So with regard to witnesses, just lay witnesses,
8 we've asked them to produce the psychiatric records and drug
9 treatment records of those witnesses. Their position is that
10 they don't possess them. Well, at a minimum they could
11 identify for us those providers so that we could issue
12 subpoenas to get those records rather than finding out at
13 trial that these witnesses have received psychiatric treatment
14 or drug abuse treatment, et cetera.

15 MS. KRULL: Your Honor, the government cited
16 extensive case law in our brief that says that the government
17 has no obligation to do that, but I will also say
18 affirmatively the government has no information whatsoever
19 about any providers. So we have no information to provide.

20 THE COURT: I guess the question would be are you
21 willing to search to see if there is any?

22 MS. KRULL: Your Honor, that's what I cited in my
23 brief. There is extensive case law both in this circuit and
24 all across the country saying we have no obligation to search
25 for those.

1 MR. LEONARD: Well, Judge, why we do wait until the
2 time of trial and finding out on cross-examination that
3 someone has had treatment for drugs or psychiatric issues?
4 And then that will create much delay. They could simply
5 identify them.

6 THE COURT: Let's put it this way. If the government
7 finds out that there is drug or psychiatric issues related to
8 treatments that they will notify the defendants at that time?

9 MS. KRULL: Your Honor, the government cited case
10 law, including Supreme Court case law in our brief that said
11 if we do have such information, the proper procedure would be
12 to have the Court review it *in camera*. And so that's the
13 proper procedure.

14 THE COURT: Okay. The Court -- that you will submit
15 the information to the Court *in camera* and notify the
16 defendants it's been done.

17 MS. KRULL: Yes, Your Honor.

18 THE COURT: And that's strictly obviously if you
19 intend to -- if that will come out during the trial, then you
20 should do that.

21 Is that acceptable?

22 MR. LEONARD: That is, Judge. If they could do that
23 immediately as to the ones that have already been identified.

24 THE COURT: Well, as soon as they find out any such
25 information --

1 MR. LEONARD: Sure.

2 THE COURT: -- they will submit it to the Court for
3 *in camera* inspection.

4 But notify the defendants that this information has
5 been turned over to the Court.

6 MS. KRULL: Your Honor, I can represent that we have
7 no such information in our possession right now.

8 THE COURT: I understand you say that. If you do
9 come up with it, then you will do so; is that correct?

10 MS. KRULL: Correct. But I want to be clear that the
11 government has no obligation to search for such information
12 because there's extensive case law that says the government --

13 THE COURT: If it comes to your attention, then you
14 will submit it to the Court.

15 MS. KRULL: Yes, Your Honor.

16 THE COURT: What else?

17 MR. LEONARD: There's one more category, Judge.

18 Just in terms of law enforcement witnesses, anything
19 that -- proceedings, internal complaints that bear upon
20 truthfulness, veracity.

21 THE COURT: That's *Giglio* material.

22 MR. LEONARD: Well, Judge, we would like that
23 produced. Their position is that they don't have to produce
24 if it's not sustained. We're not talking about whether it's
25 admissible or not. We would like to see the materials, and we

1 would like to see them sooner rather than later.

2 MS. KRULL: Your Honor, our position is 45 days prior
3 to trial we will turn over the sustained complaints against
4 any law enforcement officers. We've cited case law in our
5 brief that says that allegations that are not sustained, that
6 are not found to be credible, that the government has no
7 obligation to turn that over.

8 THE COURT: But you will do so.

9 MS. KRULL: Your Honor, we object to doing so because
10 that's not our practice. That's not how we handle this in all
11 of our other cases.

12 THE COURT: I just finished a trial involving *Giglio*
13 material over whether -- not necessarily whether it was
14 sustained or not, but -- well, they contend they don't have to
15 do it. So you have a motion so I'll have to decide that,
16 whether or not --

17 MR. LEONARD: Could we just file a reply with respect
18 to that, Judge?

19 THE COURT: You may file a reply.

20 MR. LEONARD: 14 days?

21 THE COURT: All right.

22 What else? Anything else?

23 MR. LEONARD: I think that's pretty much the
24 categories we've discussed.

25 THE COURT: Anything else? Everybody happy?

1 MR. BRINDLEY: No, Your Honor.

2 THE COURT: Everybody is happy?

3 MS. KRULL: Your Honor, I think the last remaining
4 issue is the pending motion by Mr. Kelly for reconsideration
5 of his bond that was filed about six months ago.

6 THE COURT: Are you going to --

7 MR. GREENBERG: Not at this time, Judge. I don't
8 know why that showed up on the docket, or people thought --

9 THE COURT: Why don't I do this. Why don't I deny it
10 without prejudice at this time.

11 MR. GREENBERG: Why don't we withdraw it, Judge.

12 THE COURT: Okay. Motion is withdrawn.

13 Anything else?

14 MR. LEONARD: No, Judge.

15 THE COURT: Thank you.

16 MS. KRULL: No, Your Honor.

17 THE COURT: Thank you.

18 MR. GREENBERG: Thank you.

19 (Which were all the proceedings heard.)

20

CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the record of proceedings in the above-entitled matter.

23 /s/Kelly M. Fitzgerald

March 6, 2020

24 Kelly M. Fitzgerald
Official Court Reporter

Date _____

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